THE JAPANESE FIREARM AND SWORD POSSESSION CONTROL LAW: TRANSLATOR'S INTRODUCTION

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Abstract: Japan's Firearm and Sword Possession Control Law was amended in 1993 and again in 1995, partially in response to changing firearms confiscation demographics. In the past, most firearms were confiscated from members of organized crime groups, and the Japanese viewed firearms largely as a danger related to organized crime. However, confiscation statistics suggest that firearms are moving into the hands of the general population, increasing the risk firearms pose to public safety in Japan. In response to this trend, Japan amended the Firearm and Sword Possession Control Law in 1993 and 1995 by adding add new crimes, more severe punishments, provisions on the mitigation of sentences for the surrender and submission of contraband, and provisions on new investigative techniques.

I. INTRODUCTION

Japan's Firearm and Sword Possession Control Law was overhauled in 1993 and again in 1995 to adapt to changing demographics in gun confiscations. Statistics show that in Japan, guns are moving out of the hands of organized crime and into the hands of the general population.[1] This fundamental shift marks the first time in Japan's post-war history that guns have become a public threat. Up until this time, guns were seen predominantly as tools of organized crime.[2] As more people obtain access to guns, however, Japan must confront the dangers that firearms pose to the general public.

Table 1 details gun confiscation statistics and shows a number of trends. First, the overall number of handguns confiscated in Japan has increased.[3] Second, the number of handguns confiscated from individuals not associated with organized crime groups has also increased steadily in

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[1] *See infra* note 4 and accompanying table.

[2] K. Miyazawa et al., *Juki taisaku no konnichiteki igi* [*Today's Meaning of Countermeasures Against Firearms*], KEISATSUGAKU RONSHU [J. POLICE SCI.], Aug. 1995, at 1, 2; Y. Inoue, *Juki josei to taisaku* [*Current Firearms Situation in Japan and Countermeasures to Be Taken Against This Threat*], KEISATSUGAKU RONSHU [J. POLICE SCI.], Aug. 1995, at 26, 27.

[3] Note that gun confiscations peaked in 1984. This earlier peak was due to intense warfare between two rival crime organizations, Yamaguchi-gumi and Ichiwa-kai. Miyazawa et al., *supra* note 2, at 5.

Table 1. Firearms Confiscated in Japan[4]

Year	From Organized Crime	Not From Organized Crime	From a Smuggling Operation	Unreconstructed Handguns	Reconstructed Handguns	Total Number of Handguns Confiscated
1975	1246	141	26	363	1024	1387
1976	1350	214	74	548	1016	1564
1977	1214	141	27	536	819	1355
1978	875	114	67	398	591	989
1979	865	116	46	498	483	981
1980	843	99	83	523	419	942
1981	878	82	52	549	411	960
1982	1090	155	145	830	415	1245
1983	1037	75	25	673	439	1112
1984	1702	105	419	1183	624	1807
1985	1615	170	226	1369	416	1785
1986	1340	110	107	1223	227	1450
1987	1479	113	304	1335	257	1592
1988	1160	104	173	1074	190	1264
1989	1003	16	127	896	123	1019
1990	918	45	16	899	64	963
1991	954	78	51	948	84	1032
1992	1072	378	27	1290	160	1450
1993	1196	476	60	1356	316	1672
1994	1242	505	64	1513	234	1747
1995	1396	484	-	-	-	1880

[4] Sources for Table 1 include K. Miyazawa et al., *supra* note 2, at 5; and T. Miyazono, *Saikin no juki jyosei to sono taisaku ni tsuite* [*Concerning the Recent Gun Situation and Countermeasures Against It*], KEISATSUGAKU RONSHU [J. POLICE SCI.], Aug. 1996, at 48, 50.

recent years. Third, the number of unreconstructed[5] handguns recovered by police is on the rise. Unreconstructed handguns are handguns that have not been remanufactured from handgun parts and are in an original, unmodified state. In 1975 only twenty-six percent of all handguns confiscated were unreconstructed. In 1994 this number rose to eighty-six percent. This rise indicates that smuggling operations are becoming more efficient at importing whole handguns as opposed to handgun parts.

II. GENERAL OVERVIEW OF THE FIREARM AND SWORD POSSESSION CONTROL LAW

The Firearm and Sword Possession Control Law[6] ("the Law") consists of five chapters. Chapter 1 contains general provisions, including the purpose of the Law (Article 1), the definitions used in the Law (Article 2), and the activities which the Law proscribes (Article 3). Chapter 2 sets out rules for obtaining permission to possess a firearm or sword, as well as rules for firearm and sword instruction, practice, maintenance, and storage. Chapter 3 contains rules for the registration of antique firearms and swords and for the manufacture of swords. Chapter 4 contains miscellaneous provisions, including limitations on conveyance, prohibitions on imitation guns, rules related to temporary storage, record-keeping, and fees, and a provision which creates an affirmative duty to report the loss or theft of firearms or swords. Finally, Chapter 5 sets forth fines and sentences for violations of the Law.

A. Types of Weapons Covered by the Law

Article 2 provides definitions for the terms "firearm" and "sword" and thus establishes the scope of the Law. A firearm is defined as any handgun, military rifle, machine gun, large caliber gun, hunting gun, or other gun which uses gunpowder and which discharges metal bullets, or any air gun

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5 The Japanese term is *shinsei kenju*, literally meaning "whole" or "genuine" handgun.

6 Juhotokenrui shojito torishimariho [Firearm and Sword Possession Control Law] (adopted Mar. 10, 1958, amended 1978, 1993, and 1995) Law No. 6, *reprinted in* ROPPO ZENSHO [COMPENDIUM OF LAWS] 1462 (1999). Provisions in the Law will be referred to by article, paragraph, and clause, as available. The first paragraph (and only the first paragraph) of each article is not numbered in the Japanese version. When making reference to the first paragraph of an article, a paragraph designator is included to avoid confusion. For example, Article 3(1) refers to Article 3, Paragraph 1, and Article 3(1)(1) refers to Article 3, Paragraph 1, Clause 1.

which discharges metal bullets.[7] The definition of "air gun" includes any spring, pump, or compressed gas air gun that uses compressed air, carbon dioxide, or other gasses.[8] Guns that shoot plastic bullets, paint, or water are not included in the definition of a firearm. Under Article 3-4, handguns, military rifles, machine guns, and large caliber guns are collectively referred to as "handguns, etc." (hereinafter "Article 3-4 Handguns").[9]

B. *Prohibitions on the Possession of Firearms and Swords*

Articles 3 and 22 through 22-4 of the Law outline general prohibitions on the possession of firearms and swords. Unless otherwise provided by a specific provision, the Law prohibits the following: possession of a firearm, handgun part, handgun ammunition, imitation handgun, or a mock arm with intent to sell;[10] import of an Article 3-4 Handgun, a handgun part, or handgun ammunition;[11] conveyance of an Article 3-4 Handgun, a handgun part, or handgun ammunition;[12] receipt of an Article 3-4 Handgun, a handgun part, or handgun ammunition;[13] the firing of an Article 3-4 Handgun in a public place such as a public road, park, station, theater, and department store or on or at public transportation;[14] the carrying of a sword with a blade length of greater than six centimeters,[15] or an imitation sword;[16] or the failure to report a recovered firearm or sword[17] or the loss or theft of a registered firearm or sword.[18]

C. *Permission to Possess a Firearm or Sword*

Under certain conditions, individuals may be granted permission to possess a firearm. Chapter 2 of the Law sets forth the requirements for

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7 Firearm and Sword Possession Control Law, *supra* note 6, art. 2.

8 HOMUSHO HOMUSOGOKENKYUJO [MINISTRY OF JUSTICE LEGAL RESEARCH AND TRAINING INSTITUTE], KENSHU KYOZAI: JUHOTOKENRUI SHOJITO TORISHIMARIHO [MATERIALS FOR TEACHING AND STUDY: FIREARM AND SWORD POSSESSION CONTROL LAW] 15 (1991).

9 Firearm and Sword Possession Control Law, *supra* note 6, art. 3-4. For the sake of clarity, the term "Article 3-4 Handguns" is used in place of the term "handguns, etc." in this Introduction. The term "handguns, etc." is retained in the translation.

10 *Id.* arts. 3, 3-2, 3-3, 22-2, 22-3.

11 Firearm and Sword Possession Control Law, *supra* note 6, arts. 3-4, 3-5, 3-6.

12 *Id.* arts. 3-7, 3-8, 3-9.

13 *Id.* arts. 3-10, 3-11, 3-12.

14 *Id.* art. 3-13.

15 *Id.* art. 22.

16 *Id.* art. 22-4.

17 *Id.* art. 23.

18 *Id.* art. 23-2.

permission. Upon successful permit application to the Prefectural Public Safety Commission with jurisdiction over the address of the applicant, a member of the general public may possess a hunting gun or air gun, a gun with an industrial application (including life-saving rope guns and signal guns, animal anesthesia and butchery guns, whaling guns, and rope and nail guns for construction), a gun for testing or research purposes, a handgun or air handgun for use in international competitions, a starter's handgun for use in national or international athletic competitions, swords with industrial applications, ceremonial swords, firearms for use in theatrical performances, or a firearm or sword used for display at an exhibition or in a museum.[19] However, the Law contains no specific provision that allows members of the general public to possess Article 3-4 Handguns by permit.

Generally, in order to obtain permission to possess a firearm, a person must receive shooting instruction from a shooting instructor.[20] This shooting instruction must take place at an instructional firing range,[21] and the person must use instructional guns provided by the firing range.[22] Persons who have obtained permission to possess a firearm generally are required under Article 10-2 to maintain their shooting skills through practice. A person may practice shooting at a practice firing range.[23]

D. *Punishments*

Articles 31 through 37 outline punishments for violations of the various provisions of the Law. Table 2 provides an overview of the punishment structure for violations of provisions related to Article 3-4 Handguns, handgun parts, and handgun ammunition.

III. THE 1993 AND 1995 AMENDMENTS

The 1993 amendments created several new crimes under the Law, including the conveyance of Article 3-4 Handguns and handgun parts.[24] The 1993 amendments also stiffened penalties for existing crimes. Table 3 outlines some of the significant changes made in 1993 and shows how some of the punishments were further altered in 1995.

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19 *Id.* arts. 4(1)(1)-4(1)(10).
20 *Id.* art. 9-5. Note that the term "shooting instructor" is defined in Article 9-3.
21 *Id.* art. 9-4.
22 *Id.* art. 9-6.
23 *Id.* arts. 9-9, 9-10.
24 *Id.* arts. 3-7, 3-8, 3-9.

Table 2. Crimes and Punishments

Object	Possession	Import	Conveyance/Loan	Receipt
Article 3-4 Handgun (Handgun, Military Rifle, Machine Gun, Large Gun)	Prohibition: Art. 3(1) Punishment: 1 to 10 year sentence (Art. 31-3) With ammunition: 3 year minimum sentence (Art. 31-3(2))	Prohibition: Art. 3-4 Punishment: 3 year minimum definite sentence (Art. 31-2) With intent to sell: 5 years to indefinite w/optional fine of up to ¥10,000,000 (Art. 31-2(2))* Planning: up to 5 years and/or Up to ¥1,000,000 fine (Article 31-12) In the event of confession before the execution of the crime, the crime shall be lessened or forgiven (Art. 31-12)	Prohibition: Art. 3-7 Punishment: 1-10 years (Art. 31-4) With intent to sell: 3 year minimum definite sentence w/ optional ¥5,000,000 fine. (Art. 31-4(2))* Brokering/arranging conveyance: Up to 3 years (Art. 31-15)	Prohibition: Arts. 3-10 Punishment: 1-10 years (Art. 31-4) With intent to sell: 3 year minimum definite sentence w/ optional ¥5,000,000 fine. (Art. 31-4(2))* Brokering/arranging receipt: Up to 3 years (Art. 31-15)
Handgun Parts	Prohibition: Art. 3-2(1) Less than 3 years and/or ¥500,000 fine (Art. 31-16(1)(2))*	Prohibition: Art. 3-5 0-5 years and/or ¥1,000,000 fine (Art. 31-11(1)(2))*	Prohibition: Art. 3-8 Less than 3 years and/or ¥500,000 fine (Art. 31-16(1)(3))*	Prohibition: Art. 3-11 Less than 3 years and/or ¥500,000 fine (Art. 31-16(1)(3))*
Handgun Ammunition	Prohibition: Art. 3-3 Punishment: Up to 5 years and up to a ¥1,000,000 fine (Art. 31-8) In the event of a surrender and the submission of the ammunition, the crime shall be lessened or forgiven (Art. 31-10)	Prohibition: Art. 3-6 Punishment: Up to 7 years and up to a ¥2,000,000 fine (Art. 31-7) With intent to sell: Up to 10 years and up to a ¥3,000,000 fine (Art. 31-7(2))*	Prohibition: Art. 3-9 Punishment: Up to 5 years and up to a ¥1,000,000 fine (Art. 31-9) With intent to sell: Up to 7 years and up to a ¥2,000,000 fine (Art. 31-9(2))*	Prohibition: Art. 3-12 Punishment: Up to 5 years and up to a ¥1,000,000 fine (Art. 31-9) With intent to sell: Up to 7 years and up to a ¥2,000,000 fine (Art. 31-9(2))*

* Same penalties apply to attempted violations. *See* arts. 31-16(2), 31-2(3), 31-11(2), 31-7(3), 31-4(3), 31-9(3).

Table 3. Changes in Punishment Structure[25]

Name of Crime	Pre-1993 Punishment	1993 Amendment	1995 Amendment
Import of Article 3-4 Handgun (Arts. 3-4, 31-2)	1-10 years	3+ years	Same
. . . with intent to sell (Art. 31-2(1)(2))	1+ years, or 1+ years and less than ¥5,000,000 fine	5 years to life, or 5 years to life and ¥5,000,000 fine	5 years to life, or 5 years to life and ¥10,000,000 fine
Preparation to Import (Art. 31-12)	Less than 5 years and less than ¥1,000,000 fine	Same	Same, with mitigation for confession before crime
Money Offered (Art. 31-13)	Less than 5 years and less than ¥1,000,000 fine	Same	Same, with mitigation for confession before crime
Possession of Article 3-4 Handgun (Arts. 3(1), 31-3)	Less than 10 years and less than ¥2,000,000 fine	1 to 10 years	Same
. . . with ammunition (Art. 31-3(1)(2))	Not regulated	3+ years	Same
Conveyance of Article 3-4 Handgun (Arts. 3-7, 31-4)	Not regulated	1 to 10 years	Same
. . . with intent to sell (Art. 31-4(1)(2))	Not regulated	3+ years, or 3+ years and ¥2,000,000 fine	3+ years, or 3+ years and ¥5,000,000 fine
. . . brokering (Art. 31-15)	Not regulated	Up to 3 years	Same
Import of Handgun Parts (Arts. 3-5, 31-11(1)(2))	Less than 3 years and less than ¥500,000 fine	Same	Less than 5 years and less than ¥1,000,000 fine
Possession of Handgun Parts (Arts. 3-2(1), 31-16(1)(2))	Less than 2 years and less than ¥300,000 fine	Same	Less than 3 years and less than ¥500,000 fine
Conveyance, etc. of Handgun Parts (Arts. 3-8, 31-16(1)(3))	Not regulated	Less than 2 years and less than ¥300,000 fine	Less than 2 years and less than ¥500,000 fine
. . . brokering (Art. 32(1)(1))	Not regulated	Less than 6 months and less than ¥200,000 fine	Less than 1 year and less than ¥300,000 fine

[25] This table was adapted from K. Nakagawa, *Juhotokenrui shojito torishimariho oyobi bukito seizoho no ichibu o kaisei suru horitsu* [*The Law Partially Amending the Munitions Manufacture Law and the Firearms and Swords Possession Control Law*], HORISTU NO HIROBA [LEGAL F.], Sept. 1993, at 4, 5; Tsuji & Kojima, *infra* note 29, at 55, 72-75.

The 1995 amendments to the Law effected four major changes.[26] First, Article 3-13 was added to the Law, making it a crime to fire an Article 3-4 Handgun in a road, park, station, theater, department store, or other place used by large numbers of people, or on or at a train or mass transit vehicle.[27] Until 1995, the Law only prohibited the possession and manufacture of firearms and similar acts, not the use of firearms. Injuring or killing a person was proscribed by the Penal Code,[28] and doing so with a firearm was proscribed by the Law Concerning Punishment of Violent Activities.[29] The addition of Article 3-13 marks the first direct attempt to criminalize the firing of a weapon under the Firearm and Sword Possession Control Law.[30] The possible penalties for violations of Article 3-13 are severe, including imprisonment from three years to life.[31] This change reflects new concerns in Japan about the dangers that firearms pose to public safety.[32]

Second, the 1995 amendments include provisions that proscribe the possession, import, conveyance, and receipt of firearm ammunition.[33] Prior to these amendments, the possession of ammunition was criminalized only under the Gunpowder Control Law.[34] However, the Gunpowder Control Law was created to avoid industrial disasters, and includes only light penalties for the possession of ammunition.[35] Since the 1995 amendments, the possession of firearm ammunition has been covered directly by the Firearm and Sword Possession Control Law.

Third, the 1995 amendments provide for the mitigation of sentences and exemption from prosecution for persons who surrender firearm ammunition to authorities or confess to authorities that they plotted to import Article 3-4 Handguns.[36] This amendment suggests that the Japanese government has made removing ammunition from public circulation a

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[26] *See* Miyazawa et al., *supra* note 2, at 11-13.

[27] Firearm and Sword Possession Control Law, *supra* note 6, art. 3-13.

[28] Keiho [Penal Code] (adopted Apr. 24, 1907) Law No. 45, *reprinted in* ROPPO ZENSHO [COMPENDIUM OF LAWS] 2843 (1999).

[29] Boryoku koito shobatsu ni kan suru horitsu [Law Concerning Punishment of Violent Activities] (adopted 1926) Law No. 60, arts. 1-2, *reprinted in* ROPPO ZENSHO [COMPENDIUM OF LAWS] 1442 (1999). For a discussion of the number and types of crimes that may be involved in a firearm shooting incident, see Y. Tsuji & T. Kojima, *Juhotokenrui shojito torishimariho no ichibu o kaisei suru horitsu ni tsuite [On the Law for Partial Amendment to the Firearms and Swords Control Law]*, KEISATSUGAKU RONSHU [J. POLICE SCI.], Aug. 1995, at 69.

[30] For a discussion of this point, see Miyazawa et al., *supra* note 2, at 11.

[31] Firearm and Sword Possession Control Law, *supra* note 6, art. 31.

[32] Miyazawa et al., *supra* note 2, at 11-12.

[33] Firearm and Sword Possession Control Law, *supra* note 6, arts. 3-3, 3-6, 3-9, 3-12.

[34] Kayakurui torishimariho [Gunpowder Control Law] (adopted 1950) Law No. 149, *reprinted in* ROPPO ZENSHO [COMPENDUIM OF LAWS] 1442 (1999).

[35] Miyazawa et al., *supra* note 2, at 12.

[36] Firearm and Sword Possession Control Law, *supra* note 6, arts. 31-10, 31-12, 31-13.

higher priority than punishing a person for violating the statute. It must be kept in mind, however, that numerous punishments for firearm-related offenses are made more severe under the 1995 amendments, as shown in Table 3.

Fourth, the 1995 amendments made two new investigative techniques possible: clean-controlled delivery and undercover decoy or sting operations.[37] In clean-controlled delivery, customs agents intercept firearms at their point of entry into Japan and remove them from their containers.[38] The containers are then resealed, often with dummy cargo inside, and shipped to a destination.[39] The person receiving the shipment at the destination is subject to arrest for receipt of the container with intent to receive a firearm.[40] Clean-controlled delivery can be contrasted with ripe-controlled delivery, where contraband is allowed to travel to its destination, at which point arrests may be made for the actual receipt of the contraband. Clean-controlled delivery is made possible under the Law by Article 31-17, which imposes up to a three-year sentence and up to a ¥500,000 fine for the receipt of *any* object with the intent to import Article 3-4 Handguns in violation of Article 31-2 and Article 3-4.

Article 27-3 provides explicit statutory authority for law enforcement officers and informants to conduct undercover decoy operations. However, to be lawful under Article 13 of the Japanese Constitution and the Code of Criminal Procedure, an undercover operation must (1) be necessary and (2) involve appropriate means or methods.[41]

IV. CONCLUSION

The Firearm and Sword Possession Control Law has successfully regulated a broad range of firearms and is one reason for the low crime rate in Japan. In Japan, the number of homicides is only about one percent of that in the United States.[42] However, changes in the demographics of

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37 *See generally* T. Tokunaga, *'Otori sosa,' kontororudo deribarito atarashii sosa shuho ni tsuite* [*New Investigative Techniques of Decoy Operation and Controlled Delivery*], KEISATSUGAKU RONSHU [J. POLICE SCI.], Aug. 1995, at 91.

38 *Id.* at 97.

39 *Id.*

40 *Id.*

41 *Id.* at 93-97.

42 In 1990 there were 1238 reported homicides in Japan. MINISTRY OF JUSTICE LEGAL RESEARCH AND TRAINING INSTITUTE, HANZAI HAKUSHO [WHITE PAPER ON CRIME] 6 (1991). That same year, there were 90 arrests made for firearm-related homicides in Japan. J. Hando, *Boryokudan o chushin to shita kenjyu taisaku no suishin* [*Progress of Handgun Countermeasures Centered on Organized Crime*] KEISATSUGAKU RONSHU [J. POLICE SCI.], Aug. 1992, at 11, 13. Japan had an arrest rate of 96.7% for

firearm possession in Japan have forced the Japanese government to take measures to strictly regulate the flow of firearms into the general population. It is hoped that this translation will increase the access of non-Japanese speakers to the Firearm and Sword Control Law and enable them to see if the new crimes, more severe punishments, and new investigative techniques established under the 1993 and 1995 amendments will enable Japan to withstand these changes.

homicide offenses in 1990. MINISTRY OF JUSTICE LEGAL RESEARCH AND TRAINING INSTITUTE, HANZAI HAKUSHO [WHITE PAPER ON CRIME] 409 (1995). In 1990, the actual number of victims killed in shooting incidents of all types in Japan was 36. *Id.* at 237. In the United States there were 23,440 reported murders and non-negligent homicide offenses in 1990. U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, 1993 58 (1994) (Table 1, Index of Crime, United States, 1974-1993). That same year there were 13,035 victims of firearm-related non-negligent homicide in the United States. U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, 1992 18 (1993) (Table 2.9, Murder Victims, Type of Weapons Used 1988-1992). In 1990 Japan's population was 123,537,399. U.S. Bureau of the Census, *1990 US Census Data* (visited Mar. 9, 1997) <http://venus.census.gov/cdrom/lookup/lookup/CMD=LIST/DB=C90STF1C/LEV=NATION90>. That same year the population of the United States was 248,709,873. U.S. Bureau of the Census, *International Data Base* (visited Mar. 9, 1997) <http://www.census.gov/ipc/www/idbprint.html>. Using these numbers, in 1990 the number of homicides in Japan was 10.63% of that in the United States ((1238 * 248,709,873)/(23,440 * 123,537,399) = 10.63%), and the number of firearm-related homicide offenses in Japan was 1.43% of that in the United States ((90 * (100/96.7) * 248,709,873)/(13035 * 123,537,399) = 1.43%).